IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.18789 of 1997

Between:

A.P. State Wakf Board, rep. by its Chief Executive Officer,
Razack Manzil, Nampally, Hyderabad.

..... PETITIONER

AND

1 The Special Deputy Collector
E.G.Dist.
2 LAO, ONGC,
Rajahmundry, E.G.Dist,.A.P.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an Order, Writ, or direction to the Respondent to send the matter to Civil Court of competent jurisdiction U/Sec. 19(1) and (2) of L.A. Act for proper adjudication of the market value of the acquired land.

Counsel for the Petitioner: MR.A.NARENDRA

Counsel for the Respondents: GP FOR LAND ACQUISITION AND MR. K. VENKAT RAO, STANDING COUNSEL

The Court made the following:

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 18789 of 1997

O r d e r:

Heard the learned counsel for the petitioner and the learned Standing Counsel for ONGC.

The petitioner is the Wakf Board. The land of the petitioner was acquired by the Government during 1993 following the procedure contemplated under the Land Acquisition Act, 1894 (for short 'the Act'), for some public purpose. The Special Deputy Collector-Land Acquisition Officer conducted award enquiry on 17-9-1993, in which, the petitioner as well as some ryots and mujawars, filed claim petitions. Thereupon, the Special Deputy Collector, after conducting enquiry, passed an award in Award No. 1/95 on 19-6-1995. However, in view of the rival claims as to title, the Special Deputy Collector, referred the matter to the Civil Court, for adjudication. During the pendency of the matter before the Civil Court, the petitioner states that Government in their Memo dated 18-6-1996, permitted a compromise between them and then ryots and mujawars, and accordingly the Sub Court, Razole, passed a compromise decree in O.P. No. 23 of 1996.

Now it is the case of the petitioner that since at the time of enquiry the ryots and mujawars filed petitions under Sections 18(2) and 31(2) of the Act, for enhancement of compensation and reference of the dispute to the Civil Court, and since at the instance of the petitioner, the payment of compensation was stopped, a compromise now having reached between the petitioner and the ryots and mujawars, the petitioner submits that it has stepped into the shoes of the ryots and mujawars, and as the Special Deputy Collector did not pay compensation for some trees and fixtures on the acquired land, as requested by the ryots and mujawars, and in spite of receiving notice failed to refer the matter to Civil Court under Section 18(2)

of the Act, for enhancement of compensation, the learned counsel for the petitioner prays that that the Special Deputy Collector, be directed to refer the matter under Section 18(2) of the Act, for enhancement of compensation.

The Special Deputy Collector filed counter on behalf of the respondents. The learned Standing Counsel for ONGC appearing on their behalf submitted that the land of the petitioner having been acquired, an award in Award No. 1/95 was passed on
19-6-1995, and in view of rival claims as to ownership of the property, the Special Deputy Collector, referred the matter under Section 31(2) of the Act to the Civil Court, for adjudication. He denied the submission of the petitioner that the ryots and mujawars had filed petition under Section 18(2) of the Act seeking reference of the matter to the Civil Court, for enhancement of compensation, and submitted that the petitioner having participated in the award enquiry, except claiming ownership to the acquired land, has never requested the Special Deputy Collector, to refer the matter to the Civil Court, for enhancement of compensation. He submitted that the request made by the petitioner through their Advocate vide petition dated 19-10-1996 for reference of the matter to the Civil Court, for enhancement of compensation, is barred by limitation, for the reasons that the Award was passed on
19-6-1995, and the petition seeking reference was made after expiry of the time prescribed under Section 18(2)(a) of the Act. In support of his contention that a petition seeking reference under Section 18(2) of the Act after expiry of the period prescribed, is not maintainable, placed reliance on the judgment of the Division Bench of this Court in **Gaisetti Tirupathi v. LAO-cum-RDO, Paddapalli**. He, thus prayed that the writ petition be dismissed.

In order to maintain a petition under Section 18 of the Act, a person seeking reference, under sub-section (2)(a) thereof, apart from stating the grounds on which he is taking objection to the award, has to make the petition within a period of six weeks from the date of the award, if he was present or was represented before the Collector at the time when he made the award, and in other cases, as per clause (b), within two months from the date of service of notice from the Collector under sub-section (2) of Section 12 of the Act. In the instant case, the Special Deputy Collector passed the award in Award No. 1/95 on
19-6-1995, and as at the time of passing the award, the petitioner as well as ryots and mujawars were present, they ought to have filed the petition seeking reference, within six weeks from the said date, but admittedly, the petitioner through their Advocate made petition for reference under Section 18(2) of the Act on 19-10-1996, which is much beyond the period of six weeks from the date of award, and therefore, the same is not maintainable. Though the petitioner contends that the ryots and mujawars at the time of making petition under Section 32(2) of the Act seeking reference of the title dispute to the Civil Court, also made petition seeking reference of the matter under Section 18(2) of the Act to the Civil Court, for enhancement of compensation, the same is disputed by the respondents, stating that except petition under Section 32(2) of the Act, seeking reference of the title dispute, no petition under Section 18(2) of the Act, seeking reference of the matter to the Civil Court, for enhanced compensation, was made. That being the case of the respondents, the

contention of the petitioner that the ryots and mujawars at the time of award enquiry made a petition under
Section 18(2) of the Act seeking reference of the matter to the Civil Court, for enhanced compensation, cannot be accepted. The petitioner, as stated supra, made the petition through their Advocate seeking reference of the matter to the Civil Court under Section 18(2) of the Act, for enhanced compensation, much beyond the period prescribed for under the Act, and as such, it is barred by limitation. In this context, a reference to the judgment of the Division Bench of this Court in **Gaisetti Tirupathi v. LAO-cum-RDO, Paddapalli**, would be appropriate wherein it was held that the Limitation Act, 1963 has no application to the proceedings before the Collector, and as such the provisions of Section 5 thereof, cannot be made applicable for condoning the delay in filing an application seeking reference under Section 18(2) of the Act, and that the provisions of Section 5 of the Limitation Act, 1963 have application only when the Collector acts as a Court. The Division Bench holding so, observed thus:

> The Limitation Act has no application to the proceedings before the Collector and, therefore, Section 5 of the Limitation Act cannot be applied for condonation of delay in making an application under sub-section (2) of Section 18 of the Act. Though sub-section (3) of Section 18 of the Land Acquisition Act, by virtue of local amendments, treated the Collector as a Court for the limited purpose of exercising revisional jurisdiction under Section 115 of the Code of Civil Procedure to correct the errors of orders passed by the Collector under Section 18 of the Act, he cannot be considered to be a Court for the purpose of Section 5 of the Limitation Act. Section 5 of the Limitation Act stands attracted only when the Land Acquisition Officer acts as a Court.

In the above view of the matter, the petitioner having made the petition under Section 18(2) of the Act on 19-10-1996, which is much beyond the period of six weeks prescribed for filing from the date of passing of the award, which was passed on 19-6-1995, no direction can be given to the respondents directing them to refer the matter to the Civil Court under Section 18(2) of the Act, for enhancement of compensation.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 21st April, 2005.

KSR

To

1 The Special Deputy Collector
E.G.Dist.
2 LAO, ONGC,
Rajahmundry, E.G.Dist,.A.P.

3 Two CCs to GP for Land Acquisition, High Court Buildings,

Hyderabad (OUT)

4 Two CD copies

5 1 CC to SUBHANI.S.M.